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THE RIGHT OF CITIZENS OF NEUTRAL COUNTRIES TO SELL AND EXPORT ARMS AND MUNITIONS OF WAR TO BELLIGERENTS

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Since the beginning of the present war two questions as to the rights and duties of the United States have engaged the attention of our people before all others, I think because of the human interest which they involve. The first of these is the question whether the United States as one of the leading neutral nations signatory to the Hague conventions had a right and duty to protest against the violation of the neutrality of Belgium. People were interested in this because, beyond the technical questions of conventional law, they saw the ruin of a rich country and the destruction of a brave people, and ultimately a great injury to civilization itself.

The second question which has evoked general interest, and to which I propose to ask your attention for a few minutes is whether the United States has either a legal or moral duty to forbid the exportation of arms and munitions of war to the belligerents. This question is not a new one, or peculiar to the present contest; witness Lowell's complaint in his inimitable *Biglow Papers* of a similar traffic on the part of British subjects during the Civil War, when he said:

You wonder why we're hot, John,
Your mark was on the guns,
The neutral guns that shot, John,
Our brothers and our sons.

Witness also Sir William Vernon Harcourt's masterly defense under the pen name of Historicus, of the right of the citizens of neutral nations to engage in this trade, a defense to which it is submitted practically nothing can be added at the present day aside from bringing it up to date.

The Present Rule of International Law is Clear

Fortunately there is not and cannot be any serious dispute as to what the rule of international law upon this subject is. It was

laid down in unequivocal terms over one hundred years ago by Jefferson¹ and Hamilton² in the midst of a crisis which, as our chairman has pointed out, was infinitely greater for our infant nation than that through which we are passing today. And it is interesting to note that it was defended by them upon practically the same grounds upon which it is defended by the official reporter of Convention V³ of the Hague conference of 1907, "Respecting the

¹ "In one of these memorials it is stated that arms and military accoutrements are now buying up by a French agent in this country, with an intent to export them to France. We have answered that our citizens have always been free to make, vend, and export arms; that it is the constant occupation and livelihood of some of them. To suppress their callings, the only means, perhaps, of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle, and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, has not required from them such an internal derangement in their occupations. It is satisfied with the external penalty pronounced in the president's proclamation, that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerent powers, on their way to the ports of their enemies. To this penalty our citizens are warned that they will be abandoned, and that the purchases of arms here may work no inequality between the parties at war, the liberty to make them will be enjoyed equally by both." (Jefferson to Ternant, French Minister to the United States, May 15, 1793. *American State Papers*, Vol. 1, p. 147, quoted in Moore's *International Law Digest*, sec. 1308, Vol. 7, p. 955.)

² "A neutral nation has a general right to trade with a power at war. The exception of contraband articles is an exception of necessity; it is a qualification of the general right of the neutral nation in favor of the safety of the belligerent party. And it is from this cause, and the difficulty of tracing it in the course of commercial dealings, that for the peace of nations, the external penalty of confiscation is alone established." (Hamilton to Washington, May 15, 1793. *Hamilton's Works* (Lodge), Vol. 4, p. 416.)

³ This convention was reported to the conference by a sub-commission over which the distinguished Dutch jurist, M. Asser, presided, and which numbered among its members: Major General de Gündell, military delegate of Germany; Brigadier-General George B. Davis, U. S. A.; Baron Giesl de Gieslingen, major-general and military delegate of Austria; and the distinguished jurists M. Beernart, M. Louis Renault, and Lord Reay. Colonel Borel, professor at the University of Geneva, and plenipotentiary delegate of Switzerland, was the official reporter; and he explains and justifies the rule laid down in Article 7, in the following language:

"The rule which this article lays down is justified in itself independently of the reasons of a practical nature which militate in its favor. As a matter of principle, neutral states and their peoples ought not to suffer the consequences of a war which is foreign to them. The burdens and restrictions which it places upon their

rights and duties of Neutral Powers and Persons in case of War on Land," to which both Germany and the United States are parties, and which reads, Article 7, as follows:

"A neutral power is not called upon to prevent the export or transport on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or fleet."

It may be granted that this convention is not technically in force in the present war, but it affords a concise and authoritative statement of the acknowledged rule of law, a rule of law which appears to be recognized by Germany, which while strongly remonstrating against the contraband trade engaged in by the citizens of the United States as inconsistent, under the circumstances, with "the spirit of true neutrality" appears to admit that it does not constitute a "formal breach of neutrality."⁴

liberty of action should be confined to what is absolutely necessary. There is no good reason for prohibiting or burdening the commerce of the inhabitants of neutral states even in regard to articles mentioned in the text just cited. Every restriction upon neutral states in that matter which might be suggested would bring about in practice the greatest difficulties and would create inadmissible burdens on commerce in general." (Proceedings of the Second Hague Conference, Vol. 1, p. 141. Free translation.) Hague Convention XIV of 1907, "Concerning the rights and duties of neutral powers in naval war," to which the United States and Great Britain are parties, has an identical provision with Article 7 above quoted of Convention V.

"The German government believe that they are obliged to point out very particularly and with the greatest emphasis, that a trade in arms exists between American manufacturers and Germany's enemies which is estimated at many hundred million marks.

"The German government have given due recognition to the fact that as a matter of form the exercise of rights and the toleration of wrong on the part of neutrals is limited by their pleasure alone and involves no formal breach of neutrality. The German government have not in consequence made any charge of *formal breach of neutrality*. The German government cannot, however, do otherwise, especially in the interest of absolute clearness in the relations between the two countries, than to emphasize that they, in common with the public opinion in Germany, feel themselves placed at a great disadvantage through the fact that the neutral powers have hitherto achieved no success or only an unmeaning success in their assertion of the right of trade with Germany, acknowledged to be legitimate by international law, whereas they make unlimited use of their right to tolerate trade in contraband with England and our other enemies. Conceded that it is the formal right of neutrals not to protect their legitimate trade with Germany and even to allow themselves knowingly and willingly to be induced

It would be a work of supererogation to pile up diplomatic and judicial authorities in support of the right of the citizens of a neutral nation to engage in contraband trade with a belligerent.⁵ Despite the protest which the belligerent frequently makes, neutral nations have almost universally asserted and maintained this right. The exceptional cases in which the ordinary rule has not been followed in practice by neutral nations—such as the very significant exception to which His Excellency the Brazilian ambassador has called attention,⁶ the prohibition of the exportation of arms and munitions of war by Brazil during the Spanish-American war and during the present struggle, only serve to bring out more clearly the practical unanimity with which the nations of the world have not only accepted the ordinary rule, but acted on it. There is perhaps no important rule of international law better settled than that which permits the inhabitants of neutral countries to sell and export contraband to belligerents, subject to the belligerent's right to intercept on the high seas and confiscate contraband destined for its adversary.

When any rule of international law emerges from the perennial conflict between neutrals and belligerents with such unanimous acceptance it may be safely assumed that whatever may be said of it in theory it is based upon sound practical considerations. The justification for the particular rule in question is not far to seek. So long as war is to be waged, a fair balance of convenience must be

by England to restrict such trade, it is on the other hand not less their good right, although unfortunately not exercised, to stop trade in contraband, especially the trade in arms, with Germany's enemies. . . . In regard to the latter point [contraband trade especially in war materials by neutral merchant vessels], the German government ventures to hope that the American government upon reconsideration will see their way clear to a measure of intervention in accordance with *the spirit of true neutrality*." (The German minister for foreign affairs, to the American ambassador at Berlin, February 16, 1915.) See also the note of the German Embassy to the secretary of state, of April 4, 1915, transmitting a "memorandum on the German-American trade, and the question of delivery of arms" in which the Imperial government observes that "It is necessary to take into consideration not only the formal aspect of the case, but also *the spirit in which the neutrality is carried out*"; and further says that "If it is the will of the American people that there shall be a *true neutrality* the United States will find the means of preventing this *one-sided* supplying of arms, or at least of utilizing it to protect legitimate trade with Germany, especially that in foodstuffs." (The italics in all cases are those of the present writer.)

⁵ See Moore's *International Law Digest*, Vol. VII, sec. 1308, *passim*.

⁶ See page 150.

struck between the necessities of belligerents and the rights of neutrals. It would be oppressive and impracticable to call upon a neutral nation to harass its own citizens and restrain their conduct in their own country in manufacturing, selling and exporting munitions of war. On the other hand it would be futile to expect a belligerent to sit passively by and allow these munitions of war, once they have left the country of their origin and are embarked upon the high seas, to reach its adversary. Hence the compromise. Neutral citizens may sell and export; a belligerent nation may intercept and confiscate if it can.

Is it desirable in the abstract to change the present rule?

It is to be conceded, of course, that there is nothing sacred about the compromise embodied in the present rule of international law. The rule can naturally be changed by common consent or international convention, and the United States can, if it sees fit, without reference to the rule of international law, change its municipal law by forbidding the exportation of arms and munitions of war to belligerents. Several bills to this effect were introduced at the last session of Congress, and there is an organized propaganda in the country working to this end.

In considering the proposed embargo, two general questions are presented for consideration: first, whether or not the proposed change is desirable in the abstract at any time; and second, whether or not it is desirable at this time. The abstract question will be first considered.

If the rule of international law is changed, if the inhabitants of neutral countries are inhibited from exporting munitions of war to belligerents, then immediately it becomes the duty of the neutral nations to prevent such exportation just as it now is their duty to prevent armed expeditions from being set on foot on their territory to attack belligerents. And in like manner belligerents become entitled to take an interest in the performance of this duty on the part of neutrals, and to make reclamations for damages if the duty is not fulfilled with "due diligence." Of course the United States could not work a change in the general rule of international law by laying an embargo. But it could enlarge the international duties of the United States. As soon as the embargo act became a law, belligerents, by virtue of the Hague convention of 1907, No. V,

above referred to (Article 9), as well as by the general principles of international law, would be entitled to demand that the new legislation should be "impartially applied." The practical result would be, therefore, that, whereas at present we have no responsibility with respect to ordinary commercial shipments of munitions of war, the day after the proposed law went into effect we would find ourselves liable to representations with possible claims for damages in the background, from any and all of the belligerents because, say, of alleged failure to use "due diligence" impartially to apply the new law by stopping the exportation of Winchesters from Portland, Maine, or Oregon, ostensibly for lion-hunting in Abyssinia, or blasting powder from El Paso, Texas, billed to some American mine-owner in Mexico. If in enforcing the new law we looked merely to the primary destination, it would be a farce. If we endeavored to look to the ultimate destination, it would impose an intolerable burden.

Moreover, the belligerents would take an interest, not merely in the final act of exportation, but they would naturally be watchful of the manufacture and shipment within the United States of arms and ammunition which might ultimately be destined for export, and would diligently seek to keep themselves informed thereof by their secret agents, and as diligently bring the reports of their secret agents to the state department with requests for preventive action.

Far from tending toward international harmony, the proposed legislation would, it is believed, tend to multiply our duties and burdens, and thereby create international claims and international animosity. Neutral duties would be enormously increased and neutral rights restricted in an age when we had been taught to believe that peace and not war was to be the normal status of the nations. As Sir William Vernon Harcourt said in his *Letters of Historicus*, with reference to a similar proposition advanced at the time of our Civil War:

If the sale of munitions of war is to be held a breach of neutrality, "instantly upon the declaration of war between two belligerents, not only the traffic by sea of all the rest of the neutral powers of the world would be exposed to the inconveniences of which they are already impatient, but the whole inland trade of every nation of the earth, which has hitherto been free, would be cast into the fetters. . . . It would give to the belligerent the right of interference in every act of neutral domestic commerce, till at last the burden would be so enormous that neutrality itself would become more intolerable than war, and the result of

this assumed reform, professing to be founded on 'the principles of eternal justice,' would be nothing less than universal and interminable hostilities." ⁷

Moreover, although the proposition now being most discussed is limited to forbidding the exportation of arms and munitions of war, once the principle of such legislation finds approval it is likely to lead to still further encroachments on neutral commerce. The next step will naturally be to demand an embargo on conditional contraband, ⁸ whatever that may be, and no one can well foresee the complications to which this might lead.

"If Mexico," said Mr. Seward, "shall prescribe to us what merchandise we shall not sell to French subjects, because it may be employed in military operations against Mexico, France must equally be allowed to dictate to us what merchandise we shall allow to be shipped to Mexico, because it might be belligerently used against France. Every other nation which is at war would have a similar right, and every other commercial nation would be bound to respect it as much as the United States. Commerce in that case, instead of being free or independent, would exist only at the caprice of war." ⁹

Such being the justification for the present rule and the practical objections to the proposed change, what can be said in the abstract in favor of changing the established rule of international law in the manner proposed? So far as the writer is aware the two main arguments which have been urged in favor of such a change are: first, that it is wrong for neutral governments to permit their citizens to trade in munitions of war to be used against nations with which they are at peace; and second, that the prohibition of this traffic would tend to diminish the frequency, duration and severity of future wars. The ethical argument is, of course, sound from the point of view that all war is wrong, and that any assistance—direct or indirect—toward carrying on war is wrong under all circumstances. Unfortunately, however, the world is not yet prepared to accept this viewpoint. If it was, war would cease to exist at once, and there

⁷ Quoted in sec. 1308, Moore's *International Law Digest*, Vol. VII, p. 970.

⁸ If it be suggested as against this particular argument, that "conditional contraband" should be abolished and a single list of contraband agreed on, as recently proposed by the distinguished chairman of this meeting, the answer is, first, that this proposition has not yet been adopted; and second, that any agreed list of absolute contraband is likely to be so lengthy as to involve a most serious stoppage to neutral commerce in time of war.

⁹ Mr. Seward, secretary of state, to Mr. Romero, Mexican minister, December 15, 1862. Moore's *International Law Digest*, sec. 1308, p. 958.

would be no necessity for the legislation proposed. But granting that wars must for the present be endured from time to time, it is submitted that it is very doubtful whether the proposed change would tend to render them less frequent or less bloody. It would simply result in largely increased purchases of munitions of war during times of peace (unless it is also proposed to prohibit commerce in munitions of war in time of peace), and in the great increase in every country, and particularly in the United States, of the amount of fixed capital invested in the business of manufacturing munitions of war. In other words, if international commerce in munitions of war were forbidden while war itself remains, every country, according to its capacity, would have to do as Germany has done in anticipation of failure to control the seas, and every nation would have its own Essen and its own "Kanonen König." And if by any chance a peaceful country like the United States became involved in war before it had adjusted itself to the new rule by building up great establishments for the production of arms and armaments, it would pay dearly for its neglect. Instead of decreasing, it is believed that this would increase the influences in every state which make for war, unless the whole business of the manufacture of arms and munitions of war was everywhere made a government monopoly, which would raise other interesting questions—among them, whether or not the entire world has yet progressed to the point where liberty would be safe if revolution were made practically impossible through universal governmental control of the manufacture of munitions of war—questions which would lead us too far afield.

Let us not be deceived into thinking that we can abolish war by making it more burdensome for neutrals, and compelling even the non-military nations to join in the competitive construction of gun factories.

Is it desirable to change the present rule at this time?

So much on the abstract question as to changing the long-established rule of international law. But how stands the case for the proposed change in view of the actual conditions now obtaining? The proponents of the embargo proposition before Congress maintained "that it is a condition, not a theory which confronts us"; that as a practical matter England commands the seas, and arms and munitions can only be exported to the Allies and not to Ger-

many and Austria; that the rule of international law therefore lacks under these circumstances the "moral background" ¹⁰ which supports it; and to maintain it, is to fail in genuine neutrality. In this connection reference is made to Jefferson's statement that in order that "the purchases of arms here may work no inequality between the parties at war, the liberty to make them will be enjoyed equally by both." But the answer to this suggestion is obvious. The liberty to make purchases, to which Jefferson referred, is still "enjoyed equally" by both belligerents, and it is no more the concern of the United States that Germany is unable to import contraband because the British fleet commands the seas, than it would be if her failure to make use of her liberty to purchase resulted from lack of money to pay for the arms, or, as might well be the case, from the abundant ability of the Krupp works to supply her necessities.

With all deference to those who talk about "changed conditions," it is submitted that suddenly to change our law which conforms to our international duties, because England commands the seas rather more completely than she did a hundred years ago, is simply to intervene to undo the effects of her naval preparedness and naval victories. There was a time not so very long ago when Germany was victorious in the South Pacific. Would it have been fair for Chile immediately after the German victory to have forbidden the exportation of arms and ammunition, on the ground that none could get through to England?

Again, it is suggested, and this time in an official memorandum of the German government, that it makes a difference that "all nations having a war material industry worth mentioning are involved in the war themselves, or are engaged in perfecting their own armaments," and therefore the United States is "the only neutral country in a position to furnish war materials." ¹¹ With all defer-

¹⁰ See Congressman Barthold's statement before the House Committee of Foreign Affairs, December 30, 1914, Hearings on H. J. Res. 377, 378, p. 25, etc. See also the reference in the memorandum of the German government handed to the State Department by the German ambassador, April 4, 1915, to "this one-sided supplying of arms," and to the "theoretical willingness to supply Germany." See *supra*, p. 171, note.

¹¹ "The situation in the present war differs from that of any previous war. Therefore any reference to arms furnished by Germany in former wars is not justified, for then it was not a question *whether* war material should be supplied to the belligerents, but *who* should supply it in competition with other nations

ence it is submitted that it would be very singular if either the legal or the moral rights of the United States as a neutral could be affected by the number of the belligerents or the character of their industries.

It is argued in the same German memorandum that it makes a difference at least "in accordance with the spirit of true neutrality" that the arms industry of the United States is being developed through the enlargement of the present establishments and the building of new ones.¹² But surely it is no new thing for war to create as well as to destroy industries in neutral nations. One is as legitimate as the other, provided the rules of international law are observed. Belligerents cannot eat their cake and have it. Similar suggestions to the effect that the legitimacy of trade in contraband was effected by its size have been made in the past,¹³ but have never found a lodgment in the law. It is submitted with all deference that they are totally impractical—as impractical as it has been found to be to make mere bigness a test of the violation of the Sherman anti-trust act.

Precedent for the proposed action under such circumstances as the present, there is absolutely none. Obviously our embargo on the exportation of munitions of war in 1794, when war with England threatened, our general embargo of thirty days just before the war of 1812, and our embargo on the exportation of arms and munitions

In the present war all nations having a war material industry worth mentioning are either involved in the war themselves or are engaged in perfecting their own armaments, and have therefore laid an embargo against the exportation of war material. The United States is accordingly the only neutral country in a position to furnish war materials. The conception of neutrality is thereby given a new purport, independently of the formal question of hitherto existing law." (German memorandum enclosed in the note of the Imperial German Embassy of April 4, 1915.)

¹² "In contradiction thereto, the United States is building up a powerful arms industry in the broadest sense, the existing plants not only being worked but enlarged by all available means, and new ones built. The international conventions for the protection of the rights of neutral nations doubtless sprang from the necessity of protecting the existing industries of neutral nations as far as possible from injury in their business. But it can in no event be in accordance with the spirit of true neutrality if, under the protection of such international stipulations, an entirely new industry is created in a neutral state, such as is the development of the arms industry in the United States, the business whereof, under the present conditions, can benefit only the belligerent powers." (German memorandum enclosed in the note of the Imperial German Embassy of April 4, 1915.)

¹³ See Moore's *Digest*, Vol. VII, p. 960.

of war in 1898, just before we went to war with Spain, are not in point, unless the pending legislation be advocated as a precaution in view of our possibly becoming involved in the war. The recent embargoes on the exportation of arms and ammunition, instituted by neutral nations such as Italy and Holland, which have mobilized and are admittedly making every preparation for possible if not probable participation in the great struggle, are likewise not in point. Nor are similar embargoes recently declared by certain other neutral nations of Europe which, in addition to their desire to keep all their munitions of war for possible use at home, are also probably influenced by their desire to free their commerce as far as possible from interruption by English cruisers searching for contraband destined for ultimate trans-shipment from the neutral country to Germany.

As little relevant is our prohibition (under the old Spanish war resolution of 1898) of the shipment of arms and ammunition to San Domingo, in 1905, in aid of the pacification of the republic in connection with the administration of the Dominican customs and the adjustment of the Dominican debt through the aid of the United States.

But the great reliance by way of precedent of both the domestic and foreign critics of our present and time-honored policy of permitting unrestricted trade in contraband is the act of March 14, 1912, which provides:

That whenever the president shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, the president is hereby authorized, in his discretion, and with such limitations and exceptions as shall seem to him expedient, to prohibit by proclamation the export of arms or munitions of war from any place in the United States to such country until otherwise ordered by the president or by Congress.

This is not the place for a discussion of the merits of this law or the action which has been taken under it by President Taft and President Wilson, with reference to Mexico, except to submit that the whole policy of the United States in this connection has been founded upon what were thought by Congress and the executive to be the peculiar relations existing between the United States and the other American republics, and not upon the general principles of international law governing the relation of neutrality. As was said

in a statement given out at the White House at the time of the president's proclamation, February 3, 1914, raising the embargo on the exportation of arms and munitions of war to Mexico, "The Executive order under which the exportation of arms and munitions of war into Mexico was prohibited was a departure from the accepted practice of neutrality."¹⁴

¹⁴ Certain general expressions in President Wilson's address to Congress in regard to the Mexican situation on August 27, 1913, are sometimes relied on as supporting a different view. These expressions are: "It was our duty to offer our active assistance. It is now our duty to show what true neutrality will do to enable the people of Mexico to set their affairs in order again and wait for a further opportunity to offer our friendly counsels. . . ."

"For the rest, I deem it my duty to exercise the authority conferred upon me by the law of March 14, 1912, to see to it that neither side to the struggle now going on in Mexico receive any assistance from this side of the border. I shall follow the best practice of nations in the matter of neutrality by forbidding the exportation of arms or munitions of war of any kind from the United States to any part of the republic of Mexico—a policy suggested by several interesting precedents, and certainly dictated by many manifest considerations of practical expediency. We cannot in the circumstances be the partisans of either party to the contest that now distracts Mexico, or constitute ourselves the virtual umpire between them."

It is submitted, however, that these general expressions should be considered in connection with the precise point under discussion here which was the question of prohibiting the export of arms and ammunition to both sides and not merely to the Constitutionalists, as had theretofore been done. If the Constitutionalists and the forces of General Huerta had been independent nations, correct neutrality would of course have required any embargo on the exportation of arms and ammunition to be enforced equally against both. It is submitted that the recent German memorandum is not entirely happy in its reference to this Mexican precedent. It is said:

"On February 4, 1914, President Wilson, according to a statement of a Representative in Congress in the Committee for Foreign Affairs of December 30, 1914, upon the lifting of the embargo on arms to Mexico, declared that 'we should stand for genuine neutrality, considering the surrounding facts of the case. . . .' He then held that 'in that case, because Carranza had no ports, while Huerta had them and was able to import these materials, that it was our duty as a nation to treat (Carranza and Huerta) upon an equality if we wished to observe the true spirit of neutrality as compared with a mere paper neutrality.'"

President Wilson's proclamation of February 3, 1914, lifted the embargo on the ground that "as the conditions on which the proclamation of March 14, 1912, was based have essentially changed, and as it is desirable to place the United States with reference to the exportation of arms or munitions of war to Mexico in the same position as other powers, the said proclamation is hereby revoked."

(OVER)

Another incident which has been very much overworked is the supposed stopping by the German government of a ship "loaded with arms and munitions of war"¹⁵ bound from Hamburg to Spain during the Spanish-American war of 1898.

According to press dispatches the German ambassador at the time of giving out the text of the German memorandum of April 4, 1915, mentioned the incident, and quoted a portion of Mr. Andrew D. White's account in his autobiography. The facts of this incident briefly related by Mr. White¹⁶ are more fully shown in the appended statement obtained on informal application at the department of state.¹⁷ It will be observed that no shipment of contraband was

This proclamation was accompanied by the White House statement quoted in the text, from the press dispatches of February 4, 1914, which asserts in the clearest terms that *the original imposition of the embargo* by the United States under act of March 14, 1912, was not an expression of this government's conception of its duty as a neutral.

¹⁵ Hearings before the Committee of Foreign Affairs of the House on H. J. Res. 377-378, December 30, 1914, p. 28.

¹⁶ "As to the conduct of Germany during our war with Spain, while the press, with two or three exceptions, was anything but friendly, and while a large majority of the people were hostile to us on account of the natural sympathy with a small power battling against a larger one, the course of the Imperial government, especially of the Foreign Office under Count von Bülow and Baron von Richthofen, was all that could be desired. Indeed, they went so far on one occasion as almost to alarm us. The American consul at Hamburg having notified me by telephone that a Spanish vessel, supposed to be loaded with arms for use against us in Cuba, was about to leave that port, I hastened to the Foreign Office and urged that vigorous steps be taken, with the result that the vessel, which in the meantime had left Hamburg, was overhauled and searched at the mouth of the Elbe. The German government might easily have pleaded, in answer to my request, that the American government had generally shown itself opposed to any such interference with the shipments of small arms to belligerents, and had contended that it was not obliged to search vessels to find such contraband of war, but that this duty was incumbent upon the belligerent nation concerned." (Autobiography of Andrew D. White, Chapter XVI, pp. 168, 169.)

¹⁷ "It appears that on May 18, 1898, Ambassador Andrew D. White received a telephonic message from the American consul at Hamburg that the Spanish ship *Pinzon* would sail within an hour for Cardiff to take on a cargo of coal for Spanish port; that a part of the message was indistinct, and that it could not be clearly understood whether the ship was or was not liable to seizure on other grounds. The ambassador, therefore, not desiring to incur delay by asking explanations went immediately to the Foreign Office and asked for the arrest and search of the vessel, and it was promised that everything possible should be done.

"On the next morning the ambassador received a telegram from the American

"stopped" but at the request of the ambassador a ship was searched, no contraband being in fact found. The ambassador requested a search of the ship on the strength of an indistinct telephone message from the American consul at Hamburg which left Mr. White in doubt as to whether or not the ship in question might not be liable to seizure on other grounds than the carriage of contraband. Delay was impossible since the ship was about to sail. As soon as the department of state heard of the incident it instructed the ambassador to ascertain whether or not there were "any laws or regulations in force in Germany, forbidding the shipment of contraband of war," observing that

It is important that if any such laws or regulations exist this government and its agents may be informed of them so as to avoid the embarrassments which might arise if it should appear to protest on the general principles of international law against neutral governments allowing articles regarded merely as contraband of war to be shipped from their ports.

The ambassador reported that there were no such laws or regulations in force, and the matter was dropped.

It is submitted that neither as an abstract proposition, nor in consul that the *Pinzon* when passing Cuxhaven the preceding night was searched for war contraband by order of the German Chancellor, but that nothing was found.

"Upon receipt of this information on June 6, 1898, the Department instructed the ambassador that:

" 'In view of the reported action of the Imperial German government in directing the search of the *Pinzon* for contraband of war the Department desires to be advised as to whether there are any laws or regulations in force which forbid the shipment of contraband of war from Hamburg or any other German port. It is assumed that you can obtain such information without applying to the German government for it. It is important that if any such laws or regulations exist this government and its agents may be informed of them so as to avoid the embarrassments which might arise, if it should appear to protest on the general principles of international law against neutral governments allowing articles regarded merely as contrabands of war to be shipped from their ports.'

"In reply to this instruction the Ambassador on July 22 informed the Department without application to the German government for positive information on the subject that he had been unable to ascertain that there had ever been any legislation upon the subject of contraband in the Empire. The ambassador added that Germany had never issued a proclamation of neutrality, and that the Reichstag had not discussed the question of contraband since 1894, and that the Embassy had no knowledge of the issue of any regulations on the subject since the existence of war with Spain."

view of the particular facts now obtaining, neither as a matter of reason nor of precedent, should the United States depart from the well-established rule of international law which secures to the inhabitants of neutral countries the right to engage in trade in contraband of war, subject to the customary external penalty of capture and confiscation at the hands of the belligerents.